

2014 WL 7002558 (Cal.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of California.
Ventura County

Carmen Evelyn FICO,
v.
Laura Ann HICKS.

No. 56201300438082.
May 14, 2014.

Date: June 27, 2014
Time: 8:30 am
Dept: 20
Reservation No. 1952354

Defendant Arik Avaneszadeh's Demurrer to Third Amended Complaint

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TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD HEREIN

PLEASE TAKE NOTICE that on June 27, 2014 at 8:30 a.m., or as soon thereafter as this matter may be heard in Department 20 of the above captioned court, located at 800 South Victori Ave., Ventura, California 93009, Defendant ARIK AVANESZADEH (hereinafter Defendant will demur to the Third Amended Complaint filed by Plaintiff in this action.

This Demurrer is made pursuant to [California Code of Civil Procedure §§430.10\(e\)](#), on the following grounds: (1) the thirteenth cause of action does not allege facts sufficient to constitute an **elder abuse** cause of action against Defendant.

This demurrer will be based on this Notice, the attached Memorandum of Points an Authorities, the pleadings, records and papers on file in this action and any additional oral or documentary evidence or argument as may be presented at the hearing on this matter.

DATED: May 13, 2014

PAPAZIAN LAW

By:

ARMEN F. PAPAZIAN ESQ.

Attorney for Defendant Arik Avaneszadeh

DEMURRER

COMES NOW Defendant Arik Avaneszadeh, who demurs to the Third Amended Complaint of Plaintiff as set forth below:

1. The thirteenth cause of action does not allege facts sufficient to constitute an **elder abuse** cause of action against Defendant Arik Avaneszadeh. [California Code of Civil Procedure §430.10\(e\)](#);

DATED: May 13, 2014

PAPAZIAN LAW

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ARMEN F. PAPAZIAN, ESQ.

Attorney for Defendant Arik Avaneszadeh

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On or about April 9, 2014, Plaintiff filed her Third Amended Complaint in this action (the “TAC”). Previously, defendant Arik Avaneszadeh (“Defendant” or “Mr. Avaneszadeh”) was added as a doe defendant by the Plaintiff to her Second Amended Complaint. The TAC alleges for the first time that Mr. Avaneszadeh received proceeds from the sale of the Maynard Property when it was purchased by Robert Hicks, Jr. and Laura Ann Hicks, also defendants in this action. On this basis alone, Plaintiff has alleged in her thirteenth cause of action that Mr. Avaneszadeh liable for **elder financial abuse**. This allegation ignores the fact that many parties received proceed from the sale of the Maynard Property, including the escrow company itself. This fact, even true, does not in and of itself meet the elements of a **financial elder abuse** claim.

Because the TAC does not state with any specificity any facts which would support a financia **elder abuse** claim against Mr. Avaneszadeh, this Demurrer should be sustained, without leave to amend.

II. THE THIRD AMENDED COMPLAINT IS SUBJECT TO DEMURRER IF DEFECTS APPEAR ON THE FACE THEREOF.

The TAC is subject to demurrer if defects appear on the face thereof, or from any matter of which the court is required to or may take judicial notice. [California Code of Civil Procedure §430.30](#). A demurrer to a complaint may be taken to any cause of action stated therein. [California Code of Civil Procedure §430.50](#). Additionally, [California Code of Civil Procedure § 430.50](#) provides in pertinent part as follows:

“The party against whom a complaint or cross complaint has been filed may object, by demurrer or answer, as provided in [Section 430.30](#), to the pleading on any one or more of the following grounds:... (e) The pleading does not state facts sufficient to constitute a cause of action;....”

As set forth below in detail, the TAC's thirteenth cause of action fail to state facts sufficient to constitute causes of action against Mr. Avaneszadeh. Therefore, the said causes of action are subject to demurrer pursuant to the foregoing.

III. THE THIRD AMENDED COMPLAINT HAS FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION FOR **FINANCIAL ELDER ABUSE** AGAINST DEFENDANT.

The Court should sustain the demurrer to Plaintiffs claim of **elder financial abuse** because the TAC does not allege that Defendant took, secreted, appropriated, or retained any of Plaintiff's real or personal property, or that he assisted another person to do so. See [Cal. Wel. & Inst. Code 15610.30\(a\)](#). The Court should sustain the demurrer to this claim without leave to amend because the allegations of the TAC show that Mr. Avaneszadeh did not take, secret, appropriate, or retain any of Plaintiff's real or personal property.

Specifically, the TAC alleges that Mr. Avaneszadeh is liable for **elder financial abuse** because he was allegedly paid \$50,000.00 through the escrow company when the Maynard Property was sold. [See TAC, page 10, lines 9 to 14, page 34, paragraph 117.] Because of this one allegation Plaintiff alleges that Mr. Avaneszadeh is liable for **elder financial abuse**.

Even if this allegation is true, Plaintiff's assertion ignores the fact that many parties are paid through escrow when a home is sold, and this one fact alone cannot make all of these parties liable to Plaintiff. Further, there are no allegations that Mr. Avaneszadeh was aware that the funds allegedly originated from Plaintiff. The Hicks defendants paid for the Maynard Property, where they obtained the funds to do so was not known to Mr. Avaneszadeh, just as it was not known to the many other parties who were paid through the escrow for the sale of the Maynard Property Further, at the time that the funds were allegedly paid to Mr. Avaneszadeh, the funds came from the Hicks defendants and/or the escrow company, not the Plaintiff. In short, there is no allegation that Mr. Avaneszadeh appropriated any property of the Plaintiff in the TAC, only that he was paid funds through an escrow company. This alone cannot support a claim for **elder financial abuse**.

It is clear that Plaintiff is merely fishing for defendants to add to her action, and has failed to allege any facts which would support this cause of action against Mr. Avaneszadeh. Therefore Plaintiff's thirteenth cause of action for **financial elder abuse** falls drastically short of stating facts sufficient to constitute a cause of action against Mr. Avaneszadeh. Accordingly, this demurrer should be sustained without leave to amend for Plaintiff's failure to state a cause of action. See [California Code of Civil Procedure § 430.10\(e\)](#).

IV. CONCLUSION.

Based on the foregoing, Defendant Mr. Avaneszadeh respectfully submit that Plaintiff's cause of action included in its TAC fail to state facts sufficient to constitute a cause of action. Therefore, Defendant Mr. Avaneszadeh respectfully requests that this Court sustain his demurrer without leave to amend.

DATED: May 13, 2014

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ARMEN F. PAPAZIAN, ESQ.

Attorney for Defendant Arik Avaneszadeh